IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, CRIMINAL JURISDICTION
CRIMINAL APPLICATION NO. 6680 OF 2005

Ajay Manik Shinde. .. ..Petitioner

Versus

The State of Maharashtra. .. ..Respondent

Smt. Revati - Mohite - Dere, Advocate, for the Petitioner.

Shri. R. Y. Mirza, A. P. P., for the Respondent-State..

CORAM : S. C.DHARMADHIKARI, J.
DATE : NOVEMBER 16, 2005

P. C.

. Heard Smt. Mohite-Dere for the petitioner and Shri Mirza, A. P. P., for the e State.

2. In the application in paragraph (4) (g) , (h) and (i), this is what has been stated:

> 4. The petitioner states that being aggrieved by and dissatisfied with the aforesaid order dt. 30.8.05 rejecting the Petitioner’s application for bail, the petitioner is approaching this Hon’ble Court with a prayer

that he may be released on bail on the following amongst other grounds which are taken without prejudice to each other:

(a).....

(b).....

(c).....

(d).....

(e).....

(f).....

(g) The petitioner is a young man with no criminal antecedents and comes from a respectable family and as such keeping him further in jail will expose him to hardened criminals.

(h) The petitioner states that the investigation is over and chargesheet is filed and as such the petitioner ought to be released on bail on certain terms and conditions.

(i) The petitioner states that even otherwise the other 4 co-accused have been released on bail on almost similar set of facts.

3. Shri. Mirza, the learned A.P.P., does not dispute grounds (g) and filing of charge-sheet but submits that the bail application preferred by the present applicant has been rightly rejected by the Court below. He subunits that the principle of parity would be inapplicable in this case.He submits that when this application was placed before this Court on an earlier occasion, this Court desired that the Chemical Analyser's Report be produced and accordingly a copy thereof is placed for my perusal. According to Shri. Mirza, the distinguishing features are that the weapons , namely, **"Koyata"**and a sword are recovered at the instance of the present applicant. Further, the result of the analysis shows Exhibits 18, 19, 20 and 21 are stained with blood of "AB" group and the blood group is matching. This is a distinguishing feature coupled with the fact that the entire episode has taken place on account of the enmity between the deceased and the applicant.

4. Smt. Mohite - Dere submits that while it is true that the deceased as well as the applicant were carrying on a Chinese stall business as partners and

there were disputes on account of which a quarrel took place. However, she submits that as far as the other accused are concerned, blood-stained clothes have been seized from them also. There are no eye-witnesses. All of them have been enlarged on bail. She submits that the applicant has no criminal antecedents. She further submits that now the investigation is over and the charge-sheet is filed. In these circumstances, this Court should consider the case of the applicant for bail.

5. With the assistance of Smt. Mohite-Dere and Shri. Mirza, I have perused the complaint dated 17.1.2005, the order below Exhibit 6 in Sessions Case No. 316 of 2005 and the order passed by the Sessions Court in the case of other co-accused. I have also perused the relevant portion of the Report of the chemical analysis, a copy of which was placed by Shri. Mirza.

6. Considering the settled principles for grant of bail, it is true that the principle of parity has to be applied considering the facts of each case. In my view, the order passed by the Sessions Court and the material produced before the Sessions Court does not disclose that the applicant is disentitled to bail on this ground totally. The distinguishing feature as

pointed out by Shri. Mirza, namely, that there was previous enmity and the Chemical Analyser's Report showing the presence of blood, does not seem to have been pressed before the Court below. The incident in this case is on account of differences between the partners carrying on business of Chinese Stall. There was a quarrel even on the date of the incident. The alleged incident has no eyewitness. The applicant's role is that along with the others and to avenge the fight during the course of the day, he assaulted the deceased with a pointed weapon. A perusal of the relevant portion of the Report indicates that a stone is also recovered. The statements indicate injuries were inflicted by that also. bloodstained clothes are of the other Accused as well. There being no eyewitness, *prima facie,* the applicant's case cannot be treated differently than the other Accused. On the same case the other accused have been released on bail. In my view, the applicant also deserves to be enlarged on bail. The Prosecution does not urge that there is a possibility of the accused tampering with the evidence. It is not the plea of Shri. Mirza, the learned A.P.P., that he is likely to abscond. On the other hand, it has been pointed out that there are no antecedents and the applicant/petitioner is a permanent resident of Pune., He, therefore, deserves to be released on

identical conditions. Accordingly the following order is passed.

7. The application is allowed. The appellant-accused be released on bail on executing PR bond of Rs. 25,000/= and Surety Bond in the like amount on condition that he shall not tamper the prosecution evidence and attend the Deccan Gymkhana Police Station, Pune on every 2nd Sunday of each month between 2-00 p.m. to 5-00 p.m. until conclusion of the trial.

(S. C. Dharamadhikari, J.)